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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION  
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CV 08**

**BZ  
0306**

BOARD OF TRUSTEES OF THE SHEET METAL WORKERS)  
HEALTH CARE PLAN OF NORTHERN CALIFORNIA, )  
SHEET METAL WORKERS PENSION TRUST OF )  
NORTHERN CALIFORNIA, SHEET METAL WORKERS )  
LOCAL 104 VACATION, HOLIDAY SAVINGS PLAN; )  
ANTHONY ASHER, TRUSTEE, )

Plaintiffs,

vs.

C R SCHELLENGER H V A C INC, a California )  
corporation doing business as CRS H V A C )  
INC., )

Defendant.

NO. \_\_\_\_\_

COMPLAINT

Plaintiffs complain of defendant and for a cause of action  
alleges that:

1. Jurisdiction of this Court is founded upon Section 301  
(c)(1) of the National Labor Relations Act of 1947 [29 U.S.C. §185(a)]  
and Section 502 of the Employee Retirement Income Security Act of  
1974, said Act being hereinafter referred to as "ERISA" (29 U.S.C.  
§1132), in that defendant has violated a collective bargaining

COMPLAINT

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1 agreement and certain Trust Agreements, thereby violating the  
2 provisions of ERISA and the provisions of the National Labor Relations  
3 Act of 1947. This action is also brought pursuant to the Federal  
4 Declaratory Judgment Act (28 U.S.C. §2201 et seq.) in a case of actual  
5 controversy between plaintiffs and defendant, and for a Judgment that  
6 defendant pay fringe benefit contributions in accordance with its  
7 contractual obligations.

8           2. Plaintiffs Boards of Trustees of the Trust Funds named  
9 in the caption (hereinafter "Trust Funds") are trustees of employee  
10 benefit plans within the meaning of §§3(1) and (3) and §502(d)(1) of  
11 ERISA, 29 U.S.C. §1002(1) and (3) and §1132(d)(1), and a multiemployer  
12 plan within the meaning of §§3(37) and 515 of ERISA, 29 U.S.C.  
13 §§1002(37) and §1145. Plaintiff Anthony Asher is a trustee. Said  
14 Trust Funds are authorized to maintain suit as independent legal  
15 entities under §502(d)(1) of ERISA, 29 U.S.C. §1132(d)(1).

16           3. Plaintiffs are informed and believe and thereupon  
17 allege that defendant, C R SCHELLENGER H V A C Inc., a California  
18 corporation, resides and does business in St. Helena, California.  
19 Performance of the obligations to pay fringe benefits set forth in the  
20 collective bargaining agreement is in this judicial district. ERISA  
21 specifically authorizes Trust Funds to bring this action in the  
22 district where the plans are administered, 29 U.S.C. §1132(e)(2); the  
23 plans are administered in the Northern District of California.

24           4. Each and every defendant herein is the agent of each  
25 and every other defendant herein. Defendants and each of them are  
26 engaged in commerce or in an industry affecting commerce.

27           5. At all times pertinent hereto, defendant was bound by  
28 a written collective bargaining agreement with Sheet Metal Workers

1 Local Union No. 104, a labor organization in an industry affecting  
2 commerce. The aforesaid agreement provide that defendant shall make  
3 contributions to the TRUST FUNDS, on behalf of defendant's employees  
4 on a regular basis on all hours worked, and that defendant shall be  
5 bound to and abide by all the provisions of the respective Trust  
6 Agreements and Declarations of Trust of said TRUST FUNDS (hereinafter  
7 the "Trust Agreements").

8           6. The Trust Funds rely upon a self reporting system.  
9 Defendant has unique knowledge of the amounts of contributions that  
10 it is liable to pay each month, and has a fiduciary obligation to  
11 accurately report the amount to the Trust Funds.

12           7. Defendant has breached both the provisions of the  
13 collective bargaining agreement and the Trust Agreements above  
14 referred to by failing to complete and send in monthly reports and/or  
15 to pay all moneys due thereunder on behalf of defendant's employees  
16 to the TRUST FUNDS. Said breach constitutes a violation of ERISA (29  
17 U.S.C. 1002, et seq.) and of the National Labor Relations Act of 1947.

18           8. Pursuant to the terms of the collective bargaining  
19 agreement there is now due, owing and unpaid from defendant to the  
20 TRUST FUNDS on account number 318225/666 and 326720/666 contributions  
21 for hours worked by covered employees for the months of October 2007  
22 and November 2007 and, liquidated damages and interest which are  
23 specifically provided for by said agreements. The total amount due is  
24 unknown at this time; additional monthly amounts will become due  
25 during the course of this litigation and in the interest of judicial  
26 economy, recovery of said sums will be sought in this case. Interest  
27 is due and owing on all principal amounts due and unpaid at the legal  
28 rate from the dates on which the principal amounts due accrued.

1           9. Demand has been made upon said defendant, but defendant  
2 has failed and refused to pay the amounts due the TRUST FUNDS or any  
3 part thereof; and there is still due, owing and unpaid from defendant  
4 the amounts set forth in Paragraph 8 above.

5           10. An actual controversy exists between plaintiffs and  
6 defendant in that plaintiffs contend that plaintiffs are entitled to  
7 a timely monthly payment of trust fund contributions now and in the  
8 future pursuant to the collective bargaining agreement and the Trust  
9 Agreements, and defendant refuses to make such payments in a timely  
10 manner.

11           11. The Trust Funds do not at this time seek to audit the  
12 books and records of defendant. The only issue raised in this  
13 complaint is defendant's failure to complete and file voluntary  
14 monthly reports and pay the contributions due. The Trust Funds seek  
15 to obtain a judgment for any outstanding delinquent contributions  
16 based on defendant's reports and to reserve the right to audit  
17 defendant for this or any other unaudited period.

18           12. The Trust Agreements provide that, in the event suit  
19 is instituted to enforce payments due thereunder, the defendant shall  
20 pay court costs and reasonable attorneys' fee. It has been necessary  
21 for plaintiff to employ ERSKINE & TULLEY, A PROFESSIONAL CORPORATION,  
22 as attorneys to prosecute the within action, and reasonable  
23 attorneys' fee should be allowed by the Court on account of the  
24 employment by plaintiff of said attorneys.

25           WHEREFORE, plaintiffs pray:

26           1. That the Court render a judgment on behalf of plaintiffs  
27 for all contributions due and owing to the date of judgment based upon  
28 unaudited reporting forms, plus liquidated damages provided for by the

1 contract, interest at the legal rate, reasonable attorneys' fees  
2 incurred in prosecuting this action and costs.

3 2. That the Court enjoin the defendant from violating the  
4 terms of the collective bargaining agreements and the Trust Agreements  
5 for the full period for which defendant is contractually bound to file  
6 reports and pay contributions to the TRUST FUNDS.


7 3. That the Court reserve plaintiffs' contractual right to  
8 audit defendant for months prior to judgment, and in the event of such  
9 audit, collect any additional sums which may be due.

10 4. That the Court retain jurisdiction of this cause pending  
11 compliance with its orders.

12 5. For such other and further relief as the Court deems  
13 just and proper.

14 DATED: January 15, 2008

ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION

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17 By:   
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Attorneys for Plaintiffs  
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